
Introduced by Senator Solis

February 25, 2000

An act to add Division 21 (commencing with Section 60000) to the Financial Code, relating to residential mortgage loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 2128, as introduced, Solis. Residential mortgage loans.

The California Finance Lenders Law and the Residential Mortgage Lending Act establish regulatory schemes for licensees making loans to consumers secured by mortgages, deeds of trust, or other enforceable interests in the property of consumers.

This bill would establish a statutory scheme to provide consumer protection against unscrupulous and predatory practices by lenders in making consumer home loans.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 21 (commencing with Section
2 60000) is added to the Financial Code, to read:

3

4 DIVISION 21. HOME MORTGAGE LOANS

5

6 60000. This division will be known as the Consumer
7 Protection Against Predatory Lending in the Home
8 Mortgage Market Act.

1 60001. The following definitions shall apply to this
2 division:

3 (a) “Home loan” means a loan, other than an
4 open-end credit plan or a reverse mortgage transaction,
5 in which: (1) the principal amount of the loan does not
6 exceed the conforming loan size limit for a single-family
7 dwelling as established from time to time by the Federal
8 National Mortgage Association, (2) the borrower is a
9 natural person, (3) the debt is incurred by the borrower
10 primarily for personal, family, or household purposes, and
11 (4) the loan is secured by a mortgage or deed of trust in
12 real estate upon which there is located or there will be
13 located a structure or structures designed principally for
14 occupancy of from one to four families to be occupied by
15 the borrower as the borrower’s principal dwelling.

16 (b) “Lender” means any person, including an
17 individual, a corporation, a partnership, a limited liability
18 company, a joint venture, an association, a joint stock
19 company, a trust, an unincorporated organization, a
20 government, or a political subdivision of a government,
21 who is engaged in the business of making consumer loans,
22 and who originated more than five home loans within the
23 past 12-month period or acted as an intermediary
24 between originators and borrowers on more than five
25 home loans within the past 12-month period.

26 (c) “Flipping” means the making of a home loan to a
27 borrower to refinance an existing home loan when the
28 new loan does not have a reasonable, tangible net benefit
29 to the borrower considering all of the circumstances,
30 including the terms of both the new and refinanced loans,
31 the cost of the new loan, and the borrower’s
32 circumstances.

33 (d) A “high-cost home loan” means a home loan in
34 which the terms of the loan meet one or more of the
35 following thresholds:

36 (1) The annual percentage rate of the home loan at
37 consummation exceeds by five or more percentage points
38 the weekly average yield on United States Treasury
39 securities adjusted to a constant maturity of one year (as
40 made available by the Federal Reserve Board) as of the

1 week immediately preceding the week in which the interest rate for the loan is established.

(2) The home loan is a variable rate loan in which the annual percentage rate can reasonably be expected to increase beyond the threshold established in paragraph (1).

(3) Potential or scheduled increases in the annual percentage rate of the home loan are not directly tied to future increases in a widely used federal or private market measurement that reflects the cost of borrowing money, such as the interest rate yield on United States Treasury securities, the federal funds rate, or the prime interest rate.

(4) The total points and fees on the loan exceed one of the following:

(A) Three percent of the total loan amount if the total loan amount is twenty thousand dollars (\$20,000) or more.

(B) Four percent of the total loan amount if the total loan amount is twenty thousand dollars (\$20,000) or more and the loan is a purchase money loan guaranteed by the Federal Housing Administration or the Veterans Administration.

(C) The lesser of five percent of the total loan amount or eight hundred dollars (\$800), if the total loan amount is less than twenty thousand dollars (\$20,000).

The following discount points shall be excluded from the calculation of the total points and fees:

(A) Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

(B) Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which

1 the loan's interest rate will be discounted does not exceed
2 by more than two percentage points the required net
3 yield for a 90-day standard mandatory delivery
4 commitment for a reasonably comparable loan from
5 either the Federal National Mortgage Association or the
6 Federal Home Loan Mortgage Corporation, whichever is
7 greater.

8 (e) "Annual percentage rate" means the annual
9 percentage rate for the loan calculated according to the
10 provisions of the federal Truth-In-Lending Act (15 U.S.C.
11 Sec. 1601 et seq.), and the regulations promulgated
12 thereunder by the Federal Reserve Board, as that act and
13 the implementing regulations are amended from time to
14 time.

15 (f) "Points and fees" means all of the following:

16 (1) All items required to be disclosed under Sections
17 226.4(a) and (b) of Title 12 of the Code of Federal
18 Regulations, as amended from time to time, except
19 interest or the time-price differential.

20 (2) All charges for items listed under Section
21 226.4(c)(7) of Title 12 of the Code of Federal Regulations,
22 as amended from time to time, but only if the lender
23 receives direct or indirect compensation in connection
24 with the charge or the charge is paid to an affiliate of the
25 lender; otherwise, the charges are not included within
26 the meaning of the phrase "points and fees."

27 (3) All compensation paid directly or indirectly to a
28 mortgage broker, including a broker that originates a
29 loan in its own name in a table-funded transaction, not
30 otherwise included in paragraph (1) or (2).

31 "Points and fees" shall not include any of the following:

32 (A) Taxes, filing fees, recording and other charges,
33 and fees paid or to be paid to public officials for
34 determining the existence of or for perfecting, releasing,
35 or satisfying a security interest.

36 (B) Fees paid to a person other than a lender or an
37 affiliate of the lender or to the mortgage broker or an
38 affiliate of the mortgage broker for any of the following:
39 fees for flood certification; fees for pest infestation and
40 flood determinations; appraisal fees; fees for inspections

1 performed prior to closing; credit reports; surveys;
2 attorneys' fees if the borrower has the right to select the
3 attorney from an approved list or otherwise; notary fees;
4 escrow charges, so long as not otherwise included under
5 paragraph (1); title insurance premiums; and fire
6 insurance and flood insurance premiums, provided that
7 the conditions in Section 226.4(d)(2) of Title 12 of the
8 Code of Federal Regulations are met.

9 (g) "Total loan amount" means "total loan amount," as
10 used in Section 226.32 of Title 12 of the Code of Federal
11 Regulations, and shall be calculated in accordance with
12 the Federal Reserve Board's Official Staff Commentary
13 thereto.

14 (h) "Bona fide loan discount points" means loan
15 discount points knowingly paid by the borrower for the
16 purpose of reducing, and which in fact result in a bona
17 fide reduction of, the interest rate or time-price
18 differential applicable to the loan, provided the amount
19 of the interest rate reduction purchased by the discount
20 points is reasonably consistent with established industry
21 norms and practices for secondary mortgage market
22 transactions.

23 (i) "Affiliate" means any company that controls, is
24 controlled by, or is under common control with another
25 company, as set forth in the Bank Holding Company Act
26 of 1956 (12 U.S.C. Sec. 1841 et seq.), as amended from
27 time to time.

28 (j) "Obligor" means a borrower, coborrower,
29 cosigner, or guarantor obligated to repay a loan.

30 (k) "Commissioner" means the Commissioner of
31 Corporations.

32 60002. The following acts and practices are
33 prohibited:

34 (a) No prepayment fees or penalties shall be
35 contracted by the borrower and lender with respect to
36 any home loan.

37 (b) No home loan may contain a payment schedule
38 with regular periodic payments that result in an increase
39 in the principal balance, a practice known as negative
40 amortization.

1 (c) No lender may knowingly or intentionally engage
2 in the practice of “flipping” a home loan.

3 (d) No lender may recommend or encourage default
4 on an existing loan or other debt prior to and in
5 connection with the closing or planned closing of a
6 consumer home loan that refinances all or any portion of
7 that existing loan or debt.

8 (e) No lender may make a home loan unless the lender
9 reasonably believes at the time the loan is consummated
10 that one or more of the obligors, when considered
11 individually or collectively, will be able to make the
12 scheduled payments to repay the obligation based upon
13 a consideration of their current and expected income,
14 current obligations, employment status, and other
15 financial resources (other than the borrower’s equity in
16 the dwelling that secures repayment of the loan). An
17 obligor shall be presumed to be able to make the
18 scheduled payments to repay the obligation if, at the time
19 the loan is consummated, the obligor’s total monthly
20 debts, including amounts owed under the loan, do not
21 exceed 50 percent of the obligor’s monthly gross income
22 as verified by the credit application, the obligor’s
23 financial statement, a credit report, financial information
24 provided to the lender by or on behalf of the obligor, or
25 any other reasonable means. No presumption of inability
26 to make the scheduled payments to repay the obligation
27 shall arise solely from the fact that, at the time the loan
28 is consummated, the obligor’s total monthly debts
29 (including amounts owed under the loan) exceed 50
30 percent of the obligor’s monthly gross income.

31 (f) No lender may charge a fee for a product or service
32 where the product or service is not actually provided, or
33 misrepresent the amount charged by or paid to a third
34 party for a product or service.

35 (g) No lender may make or cause to be made, directly
36 or indirectly, any false, deceptive, or misleading
37 statement or representation in connection with a
38 residential loan transaction, including, but not limited to,
39 a false, deceptive, or misleading statement or
40 representation regarding the borrower’s ability to qualify

1 for any mortgage product. A statement or representation
2 is deceptive or misleading if it has the capacity or
3 tendency to deceive or mislead a borrower or potential
4 borrower. The commissioner shall consider the following
5 factors in deciding whether a statement or
6 representation is deceptive or misleading: the overall
7 impression that the statement or representation
8 reasonably creates; the particular type of audience to
9 which it is directed; and whether it may be reasonably
10 comprehended by the segment of the public to which it
11 is directed.

12 (h) No lender may compensate, whether directly or
13 indirectly, coerce, or intimidate an appraiser for the
14 purpose of influencing the independent judgment of the
15 appraiser with respect to the value of real estate that is to
16 be covered by a residential mortgage or is being offered
17 as security according to an application for a residential
18 mortgage loan.

19 (i) No lender may finance, directly or indirectly, any
20 credit life, credit disability, or credit unemployment
21 insurance, or any other life or health insurance premiums
22 through a home loan. Insurance premiums calculated and
23 paid on a monthly basis shall not be considered financed
24 by the lender.

25 (j) No home loan contract in which blanks are left to
26 be filled in after the contract is signed shall be enforceable
27 under the law.

28 60003. If the discussions between the lender and the
29 borrower concerning a home loan are conducted
30 primarily in a language other than English, the lender
31 shall, before closing, provide an additional copy of the
32 notice translated into the language in which the
33 discussions were conducted.

34 60004. The following acts and practices are
35 prohibited for high-cost home loans:

36 (a) No high-cost home loan may contain a scheduled
37 payment that is more than twice as large as the average
38 of the earlier scheduled payments. This provision does
39 not apply when the payment schedule is adjusted to the
40 seasonal or irregular income of the borrower.

1 (b) No high-cost home loan may include terms under
2 which more than two periodic payments required under
3 the loan are consolidated and paid in advance from the
4 loan proceeds provided to the borrower.

5 (c) No high-cost home loan may contain a provision
6 that increases the interest rate after default. This
7 provision does not apply to interest rate changes in a
8 variable rate loan otherwise consistent with the
9 provisions of the loan documents, provided that the
10 change in the interest rate is not triggered by the event
11 of default or the acceleration of the indebtedness.

12 (d) No high-cost home loan may contain a provision
13 that permits the lender, in its sole discretion, to accelerate
14 the indebtedness. This provision does not apply when the
15 repayment of the loan has been accelerated by default,
16 pursuant to a due-on-sale provision, or pursuant to some
17 other provision of the loan documents unrelated to the
18 payment schedule.

19 (e) In making a high-cost home loan, a lender may not
20 directly or indirectly finance any points and fees or any
21 other charges payable to third parties.

22 (f) A lender may not charge a borrower any fees or
23 other charges to modify, renew, extend, or amend a
24 high-cost home loan or to defer any payment due under
25 the terms of a high-cost home loan.

26 (g) A lender may not charge a borrower points, fees,
27 or other charges in connection with a high-cost home loan
28 if the proceeds of the high-cost home loan are used to
29 refinance an existing high-cost home loan held by the
30 same lender.

31 (h) A lender may not make a high-cost home loan
32 without first receiving certification from a counselor
33 approved by the United States Department of Housing
34 and Urban Development that the borrower has received
35 counseling on the advisability of the loan transaction and
36 the appropriate loan for the borrower.

37 (i) No high-cost home loan may be subject to a
38 mandatory arbitration clause that limits in any way the
39 right of the borrower to seek relief through the judicial
40 process.



1 (j) A lender may not pay a contractor under a
2 home-improvement contract from the proceeds of a
3 high-cost home loan other than (1) by an instrument
4 payable to the borrower or jointly to the borrower and the
5 contractor, or (2) at the election of the borrower, through
6 a third-party escrow agent in accordance with terms
7 established in a written agreement signed by the
8 borrower, the lender, and the contractor prior to the
9 disbursement.

10 60005. (a) The provisions of Section 60004 shall apply
11 to any person who in bad faith attempts to avoid its
12 application by: (1) structuring a loan transaction as an
13 open-end credit plan for the purpose and with the intent
14 of evading the provisions of this division when the loan
15 would have been a high-cost home loan if the loan had
16 been structured as a closed-end loan; (2) dividing any
17 loan transaction into separate parts for the purpose and
18 with the intent of evading the provisions of this division;
19 or (3) using any other similar subterfuge.

20 (b) A lender of a high-cost home loan who, when
21 acting in good faith, fails to comply with Section 60004,
22 will not be deemed to have violated this section if the
23 lender establishes either of the following:

24 (1) Within 30 days of the loan closing and prior to the
25 commencement of any action under this division, the
26 borrower is notified of the compliance failure,
27 appropriate restitution is made, and whatever
28 adjustments are necessary are made to the loan to do
29 either of the following, at the election of the borrower:

30 (A) Make the high-cost home loan satisfy the
31 requirements of subdivision (a).

32 (B) Change the terms of the loan in a manner
33 beneficial to the borrower so that the loan will no longer
34 be considered a high-cost home loan subject to the
35 provisions of this division.

36 (2) The compliance failure was not intentional and
37 resulted from a bona fide error, notwithstanding the
38 maintenance of procedures reasonably adapted to avoid
39 those errors, and within 60 days after the discovery of the
40 compliance failure, and prior to the commencement of

1 any action under this division or the receipt of written
2 notice of the compliance failure, the borrower is notified
3 of the compliance failure, appropriate restitution is made,
4 and whatever necessary adjustments are made to the loan
5 to do either of the following, at the election of the
6 borrower:

7 (A) Make the high-cost home loan satisfy the
8 requirements of Section 60004.

9 (B) Change the terms of the loan in a manner
10 beneficial to the borrower so that the loan will no longer
11 be considered a high-cost home loan subject to the
12 provisions of Section 60004.

13 Examples of a bona fide error include clerical,
14 calculation, computer malfunction and programming,
15 and printing errors. An error of legal judgment with
16 respect to a person's obligations under this division is not
17 a bona fide error.

18 60006. (a) Lenders that are exempt from the
19 reporting requirements of Section 2803 of Title 12 of the
20 United States Code solely because the home purchase
21 loans, including refinancings, that the lender originated
22 in the preceding calendar year totaled less than 10
23 percent of its total loan origination volume measured in
24 dollars, thereby qualifying for an exception under
25 Paragraph I.D. of Appendix A (Form and Instructions for
26 Completion of HMDA Loan/Application Register) of
27 Part 203 of Title 12 of the Code of Federal Regulations,
28 shall be required to report to the commissioner the same
29 information that other lenders are required to report
30 under subsection (b) of Section 2803 of Title 12 of the
31 United States Code to the appropriate federal agency.

32 (b) Lenders shall submit the information required
33 under subdivision (a) in the format established by the
34 United States Department of Housing and Urban
35 Development pursuant to paragraph (5) of subsection
36 (h) of Section 2803 of Title 12 of the United States Code.

37 60007. (a) Lenders shall report to the commissioner
38 the average and median interest rates of mortgage loans
39 and home improvement loans that they originate
40 grouped according to the categories established under

1 paragraph (4) of subsection (b) of Section 2803 of Title
2 12 of the United States Code: census tract, income level,
3 racial characteristics, and gender.

4 (b) In calculating the interest rate for variable-rate
5 loans to fulfill the requirements of subdivision (a),
6 lenders shall use the average interest rate on the
7 variable-rate loan for the 12 months of the reporting
8 period established under subsection (d) of Section 2803
9 of Title 12 of the United States Code, which is the calendar
10 year.

11 (c) Lenders shall submit the information required
12 under subdivision (a) in a similar format to the way the
13 lender reports information to the appropriate federal
14 agency under paragraph (5) of subsection (h) of Section
15 2803 of Title 12 of the United States Code, or to the
16 commissioner under Section 60006.

17 60008. Lenders found in violation of this act are
18 subject to forfeiture of all principal and interest on all
19 loans made in violation of this act.

20 60009. A lender shall not make investments that are
21 backed by home loans that violate Section 60002 or 60004.

22 60010. This act shall become effective 90 days after
23 enactment. The reporting requirements under Sections
24 60006 and 60007 begin with the first calendar year
25 following enactment.

